

AMENDED IN SENATE JUNE 22, 2005

AMENDED IN SENATE JUNE 20, 2005

AMENDED IN ASSEMBLY MAY 16, 2005

AMENDED IN ASSEMBLY MAY 5, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 354

Introduced by Assembly Member Cogdill

February 10, 2005

An act to amend, repeal, and add Section 2290.5 of the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 354, as amended, Cogdill. Telemedicine.

Existing law, the Medical Practice Act, regulates the practice of telemedicine, defined as the practice of health care delivery, diagnosis, consultation, treatment, transfer of medical data, and education using interactive audio, video, or data communications. A violation of the provisions governing telemedicine is a crime.

This bill would, until January 1, 2009, set forth requirements for store and forward teledermatology and teleophthalmology, as defined. The bill would require the State Department of Health Services to, on or before January 1, 2008, report to the Legislature specified information regarding store and forward telemedicine as a Medi-Cal benefit.

Because this bill would create new requirements, the violation of which would be a crime, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2290.5 of the Business and Professions
2 Code is amended to read:

3 2290.5. (a) (1) For the purposes of this section,
4 “telemedicine” means the practice of health care delivery,
5 diagnosis, consultation, treatment, transfer of medical data, and
6 education using interactive audio, video, or data
7 communications. Neither a telephone conversation nor an
8 electronic mail message between a health care practitioner and
9 patient constitutes “telemedicine” for purposes of this section.

10 (2) For purposes of this section, “interactive” means an audio,
11 video, or data communication involving a real time
12 (synchronous) or near real time (asynchronous) two-way transfer
13 of medical data and information.

14 (b) For the purposes of this section, “store and forward” means
15 the asynchronous ~~transmission of medical~~ *two-way transfer of*
16 *medical data and* information to be reviewed at a later time by a
17 health care practitioner at a distant site, where the health care
18 practitioner at the distant site reviews the medical *data and*
19 information without the patient being present. Medical *data and*
20 information may include, but is not limited to, video clips, still
21 images, x-rays, MRIs, EKGs, laboratory tests, audio clips, and
22 text.

23 (c) For the purposes of this section, “teleophthalmology and
24 teledermatology by store and forward” or “store and forward
25 teleophthalmology and teledermatology” means an asynchronous
26 ~~transmission of medical~~ *two-way transfer of medical data and*
27 information to be reviewed at a later time by a physician ~~or~~
28 ~~health care practitioner and surgeon~~ at a distant site who is
29 trained in ophthalmology or dermatology, where the physician ~~or~~

1 ~~health care practitioner~~ *and surgeon* at the distant site reviews the
2 medical *data and* information without the patient being present.
3 Store and forward teleophthalmology and teledermatology is a
4 medical service separate from an interactive medical
5 consultation, and shall meet the following requirements:

6 (1) Images must be specific to the patient's condition.

7 (2) A patient receiving store and forward teleophthalmology or
8 teledermatology services shall be notified of the right to receive
9 interactive communication with the distant ~~specialist physician or~~
10 ~~health care practitioner~~ *physician and surgeon trained in*
11 *ophthalmology or dermatology*, and, upon request, shall receive
12 an interactive communication with the distant ~~specialist~~
13 ~~physician or health care practitioner~~ *physician and surgeon*
14 *trained in ophthalmology or dermatology*. If requested,
15 interactive communication with the distant ~~specialist physician or~~
16 ~~health care practitioner~~ *physician and surgeon trained in*
17 *ophthalmology or dermatology* may occur either at the time of
18 the consultation or within 60 days of the patient's notification of
19 the results of the consultation.

20 (3) Store and forward consultation does not include telephone
21 calls, images transmitted via facsimile machine, or electronic
22 mail.

23 (d) For the purposes of this section, "health care practitioner"
24 has the same meaning as "licentiate" as defined in paragraph (2)
25 of subdivision (a) of Section 805.

26 (e) Prior to the delivery of health care via telemedicine, the
27 health care practitioner who has ultimate authority over the care
28 or primary diagnosis of the patient shall obtain verbal and written
29 informed consent from the patient or the patient's legal
30 representative. The informed consent procedure shall ensure that
31 at least all of the following information is given to the patient or
32 the patient's legal representative verbally and in writing:

33 (1) The patient or the patient's legal representative retains the
34 option to withhold or withdraw consent at any time without
35 affecting the right to future care or treatment nor risking the loss
36 or withdrawal of any program benefits to which the patient or the
37 patient's legal representative would otherwise be entitled.

38 (2) A description of the potential risks, consequences, and
39 benefits of telemedicine.

40 (3) All existing confidentiality protections apply.

1 (4) All existing laws regarding patient access to medical
2 information and copies of medical records apply.

3 (5) Dissemination of any patient identifiable images or
4 information from the telemedicine interaction to researchers or
5 other entities shall not occur without the consent of the patient.

6 (f) A patient or the patient's legal representative shall sign a
7 written statement prior to the delivery of health care via
8 telemedicine, indicating that the patient or the patient's legal
9 representative understands the written information provided
10 pursuant to subdivision (a), and that this information has been
11 discussed with the health care practitioner, or his or her designee.

12 (g) The written consent statement signed by the patient or the
13 patient's legal representative shall become part of the patient's
14 medical record.

15 (h) The failure of a health care practitioner to comply with this
16 section shall constitute unprofessional conduct. Section 2314
17 shall not apply to this section.

18 (i) All existing laws regarding surrogate decisionmaking shall
19 apply. For purposes of this section, "surrogate decisionmaking"
20 means any decision made in the practice of medicine by a parent
21 or legal representative for a minor or an incapacitated or
22 incompetent individual.

23 (j) Except as provided in paragraph (3) of subdivision (c), this
24 section shall not apply when the patient is not directly involved
25 in the telemedicine interaction, for example when one health care
26 practitioner consults with another health care practitioner.

27 (k) This section shall not apply in an emergency situation in
28 which a patient is unable to give informed consent and the
29 representative of that patient is not available in a timely manner.

30 (l) This section shall not apply to a patient under the
31 jurisdiction of the Department of Corrections or any other
32 correctional facility.

33 (m) This section shall not be construed to alter the scope of
34 practice of any health care provider or authorize the delivery of
35 health care services in a setting, or in a manner, not otherwise
36 authorized by law.

37 (n) On or before January 1, 2008, the State Department of
38 Health Services shall report to the Legislature the number and
39 type of services provided and the payments made related to the

1 application of store and forward telemedicine as a Medi-Cal
2 benefit.

3 (o) This section shall remain in effect only until January 1,
4 2009, and as of that date is repealed, unless a later enacted
5 statute, that is enacted before January 1, 2009, deletes or extends
6 that date.

7 SEC. 2. Section 2290.5 is added to the Business and
8 Professions Code, to read:

9 2290.5. (a) (1) For the purposes of this section,
10 “telemedicine” means the practice of health care delivery,
11 diagnosis, consultation, treatment, transfer of medical data, and
12 education using interactive audio, video, or data
13 communications. Neither a telephone conversation nor an
14 electronic mail message between a health care practitioner and
15 patient constitutes “telemedicine” for purposes of this section.

16 (2) For purposes of this section, “interactive” means an audio,
17 video, or data communication involving a real time
18 (synchronous) or near real time (asynchronous) two-way transfer
19 of medical data and information.

20 (b) For the purposes of this section, “health care practitioner”
21 has the same meaning as “licentiate” as defined in paragraph (2)
22 of subdivision (a) of Section 805.

23 (c) Prior to the delivery of health care via telemedicine, the
24 health care practitioner who has ultimate authority over the care
25 or primary diagnosis of the patient shall obtain verbal and written
26 informed consent from the patient or the patient’s legal
27 representative. The informed consent procedure shall ensure that
28 at least all of the following information is given to the patient or
29 the patient’s legal representative verbally and in writing:

30 (1) The patient or the patient’s legal representative retains the
31 option to withhold or withdraw consent at any time without
32 affecting the right to future care or treatment nor risking the loss
33 or withdrawal of any program benefits to which the patient or the
34 patient’s legal representative would otherwise be entitled.

35 (2) A description of the potential risks, consequences, and
36 benefits of telemedicine.

37 (3) All existing confidentiality protections apply.

38 (4) All existing laws regarding patient access to medical
39 information and copies of medical records apply.

(5) Dissemination of any patient identifiable images or information from the telemedicine interaction to researchers or other entities shall not occur without the consent of the patient.

(d) A patient or the patient's legal representative shall sign a written statement prior to the delivery of health care via telemedicine, indicating that the patient or the patient's legal representative understands the written information provided pursuant to subdivision (a), and that this information has been discussed with the health care practitioner, or his or her designee.

(e) The written consent statement signed by the patient or the patient's legal representative shall become part of the patient's medical record.

(f) The failure of a health care practitioner to comply with this section shall constitute unprofessional conduct. Section 2314 shall not apply to this section.

(g) All existing laws regarding surrogate decisionmaking shall apply. For purposes of this section, "surrogate decisionmaking" means any decision made in the practice of medicine by a parent or legal representative for a minor or an incapacitated or incompetent individual.

(h) Except as provided in paragraph (3) of subdivision (c), this section shall not apply when the patient is not directly involved in the telemedicine interaction, for example when one health care practitioner consults with another health care practitioner.

(i) This section shall not apply in an emergency situation in which a patient is unable to give informed consent and the representative of that patient is not available in a timely manner.

(j) This section shall not apply to a patient under the jurisdiction of the Department of Corrections or any other correctional facility.

(k) This section shall not be construed to alter the scope of practice of any health care provider or authorize the delivery of health care services in a setting, or in a manner, not otherwise authorized by law.

(l) This section shall become operative on January 1, 2009.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the

1 penalty for a crime or infraction, within the meaning of Section
2 17556 of the Government Code, or changes the definition of a
3 crime within the meaning of Section 6 of Article XIII B of the
4 California Constitution.

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